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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 RICKEY CALHOUN,

14 Plaintiff,

15 v.

16 DR. HENRY RICHARDS *et al.*,

17 Defendants.
18

CASE NO. C08-5101RBL/JRC

ORDER

19 This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge
20 pursuant to 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates Judges' Rules
21 MJR 1, MJR 3, and MJR 4.
22

23 Three motions have been filed since the court's last order. These motions are: (1)
24 Plaintiff's motion for appointment of counsel, (Dkt # 109); (2) Plaintiff's motion asking that any
25 summary judgment motion be stayed until he has had a chance to conduct discovery, (Dkt. #
26 116); and (3) Defendant's motion asking for a continuance as to plaintiff's motion to stay

1 because the motion is noted for a time when counsel has informed the court he is unavailable.

2 The court will also address counsel's April 24, 2009 filings. The three motions are DENIED.

3
4 (1) This is the second time plaintiff has asked for appointment of counsel. See (Dkt. # 4).
5 In his motion today Plaintiff complains of the number of motions to which he is required to
6 respond and of the possibility that he will lose the use of his personal computer because of recent
7 legislation. Plaintiff does not meet the criteria for appointment of counsel. There is no right to
8 have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28
9 U.S.C. § 1915(e) (1), can request counsel to represent a party, the court may do so only in
10 exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986);
11 Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th
12 Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood
13 of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of
14 the complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

15
16 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. Further,
17 plaintiff has not shown a likelihood of success on the merits. Plaintiff's Motion to Appoint
18 Counsel (Dkt. # 109) is **DENIED**.

19
20 (2) Plaintiff's motion asking for a continuance of any summary judgment motion until he
21 has conducted discovery, (Dkt. # 116), is premature. There is no motion for summary judgment
22 before the court. The motion is **DENIED**.

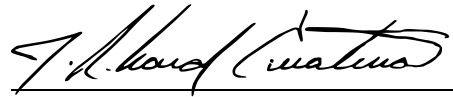
23 (3) Given that the court has denied the plaintiff's motions, defendant's motion asking for
24 a continuance, (Dkt. # 119), is also **DENIED**.

25
26 On April 24, 2009, counsel for defendants filed a number of documents asking for
judicial notice that plaintiff may have misrepresented his financial situation when seeking *in*

1 *forma pauperis* status (Dkt. # 121 to 125). Federal Rule of Civil Procedure 7(b) states that a
2 request for a court order should be made by filing a motion. The request for judicial notice is not
3 the proper manner for bringing this matter to the courts' attention. The pleadings will remain in
4 the file without further action by the court.

5 The Clerk's Office is directed to send plaintiff a copy of this order and remove Dkt. #
6 (109, 116, and 119) from the Court's calendar.
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8 Dated this 6th day of May, 2009.

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11 J. Richard Creatura
12 United States Magistrate Judge
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